IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

CRL.A.No. 623 of 1999()

CC.193/1997 of JUDL. MAGISTRATE OF FIRST CLASS-II(MOBILE), KOTTAYAM DT.15.5.1999.

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APPELLANT: COMPLAINANT

M/S.SHAW WALLACE AND CO. LTD., KOTTAYAM, REP.BY GEORGE, A.EDAKKARA, ACCOUNTS EXECUTIVE, SHAW WALLACE AND CO.LTD., KOTTAYAM BRANCH.

BY ADV. SRI.M.NARENDRA KUMAR

RESPONDENTS: ACCUSED

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1. **T.P.MURALIDHARAN, M/S. PREMIER PLANTATIONS LIMITED, 38, SOUTH FLOOR, GCDA COMPLEX, MARINE DRIVE, COCHIN 682 031.**

2. **M/S.PREMIER PLANTATIONS LTD., 38. SOUTH FLOOR, GCDA COMPLEX MARINE DRIVE, COCHIN – 31, REP.BY ITS MANAGING DIRECTOR T.P.MURALIDHARAN.**

3. **STATE OF KERALA, REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.**

BY ADV. SRI.TOM JOSE
PUBLIC PROSECUTOR SRI.K.C.SANTHOSHKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl. Appeal No. 623 of 1999

Dated this the 21st day of February, 2007

Judgment

This appeal is filed by the complainant in a petition under section 138 of the Negotiable Instruments Act. The appellant is a public limited company registered under the Indian Companies Act. Contention of the appellant was that cheque issued by the respondent was dishonoured for insufficiency of funds. Accused was acquitted on the ground that Accounts Executive who filed the complaint was not competent to represent the company. Accounts Executive of the Company's Kottayam Branch was not competent to represent the company. Admittedly, the complaint was filed by one George Edakkara who was working as Accounts Executive in the Kottayam Branch of the company. He is not a member of the director board or company secretary or a senior officer of the company entitled to file the suit on the basis of Articles of Association of the company or under the provisions of the Companies Act. It is not proved or pleaded that the company by articles of association or rule or resolution of Board authorised Accounts Officer to file the suit. According to the complainant, Ext.P1 is the authorisation.

It is an admitted fact that by board's resolution, Executive Director alone was authorised to file cases on behalf of the company. It is the case of the complainant that by Ext.P1, the above Executive Officer has authorised the Accounts Executive to file the complaint. Ext.P1 is executed by the Executive Director authorising George Edakkara, Regional Accounts Executive at Kottayam to file the complaint against the accused with regard to dishonour of cheque. The company has no case that in the resolution passed authorising the Executive Director, he was given power to authorise any officers to represent the company. It is a settled law that a delegate cannot further delegate. The well accepted maxim is "Delegata Potestas non potest delegari" means "a delegated authority cannot be redelegated". That is a delegated power cannot be conferred by the delegate upon order. In the above circumstances, there is no proper authorisation in this case.

2. Learned counsel for the appellant relied on the decision of the Supreme Court in MMTC Ltd. and another v. Medchl Chemicals and Pharma (P) Ltd. and another ((2002) 1 SCC 234), but, in that case, it was held that a complaint

filed in the name and on behalf of the company by the employee without necessary authorisation cannot be dismissed in limine as authorisation can be filed at a subsequent stage. It was held as follows at paragraph 12:

> "12. In the case of Associated Cement Co. Ltd. v. Keshvanand ((1998) 1 SCC 687) it has been held by this Court that the complainant has to be a corporeal person who is capable of making a physical appearance in the court. It has been held that if a complaint is made in the name of an incorporeal person (like a company or corporation) it is necessary that a natural person represents such juristic person in the court. It is held that the court looks upon the natural person to be the complainant for all practical purposes. It is held that when the complainant is a body corporate it is the de jure complainant, and it must necessarily associate a human being as de facto complainant to represent the former in court proceedings. It has further been held that no Magistrate shall insist that the particular person, whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings. It has been held that there may be occasions when

> different persons can represent the company. It has been held that it is open to the de jure complainant company to seek permission of the court for sending any other person to represent the company in the court. Thus, even presuming, that initially there was no authority, still the company can, at any stage, rectify that defect. At a subsequent stage the company can send a person who is competent to represent the company. The complaints could thus not have been quashed on this ground."

After holding so, in that case, the Hon'ble Apex Court only held that quashing of the complaint at the initial stage was not justifiable as there can be a subsequent authorisation. In this case, the complaint was filed as early as in 1997 and in spite of specific objection raised, defect was not rectified. No resolution of the board authorising the Accounts Executive to file suit was filed. The case was disposed of only on 15.5.1999 and no authorisation was produced and defect was not rectified. We are in 2007. So far, no authorisation from the company was produced to cure the defect. In the above circumstances, I agree with the court below that complaint was not maintainable as the complaint was not filed by an

authorised representative and he cannot file complaint on behalf of the company. The defect was not cured thereafter also. Therefore, the appeal is dismissed.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy, J.

Crl. A. No.623 of 1999

Judgment

21-2-2007